SERVICE LIST
CASE NO. U-11104

Orjiakor N. Isiogu
Assistant Attorney General
Special Litigation Division
630 Law Building
Lansing, MI 48909

Brooks Fiber Communications
Todd J. Stein
2855 Oak Industrial Drive, NE
Grand Rapids, MI 49506-1277

Telecommunications Resellers
Association
Andrew O. Isar
4312 92nd Avenue, NW
Gig Harbor, WA 98335

BRE Communications, Inc.
Richard C. Gould
4565 Wilson Avenue
Grandville, MI 49418

CAA
MAH
JMD
BC
MS
RBR
FVL
KAF
NS
CD
file

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to consider Ameritech Michigan's compliance with the competitive checklist in Section 271 of the Telecommunications Act of 1996.	)	Case No. U-11104

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA")[1], pursuant to the Michigan Public Service Commission's ("Commission") August 28, 1996 Order Establishing Procedures ("Order") in the above-captioned proceeding, and on behalf of its members, hereby comments on information filed with the Commission by Ameritech Michigan ("Ameritech") on December 16, 1996, pursuant to the Commission's Order, regarding its compliance with Section 271 of the Telecommunications Act of 1996 ("the Act").[2] [3] TRA's comments further address general concerns with Ameritech's submission of information as well as the conditions which should be considered by the Commission when evaluating whether Ameritech should be authorized entry into its in-region

[1]TRA's Notice of Interest in this proceeding was filed with the Commission on September 16, 1996.

[2]See e.g., Application of Ameritech Michigan before the Federal Communications Commission ("FCC") to provide in-region interLATA services in Michigan pursuant to Section 271 of The Telecommunications Act of 1996, January 2, 1997 (hereinafter "Application").

[3]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

interLATA market, as part of the Commission's consultative role to the FCC under Subsection 271(d)(2)(B) of the Act. While TRA is not in a position to dispute the factual evidence submitted to the Commission by Ameritech, it believes that Ameritech has not yet fully complied with the requirements of Section 271 of the Act for in-region interLATA market entry and moreover, that Ameritech's bid for in-region interLATA market entry is premature. TRA urges the Commission to find that Ameritech has not yet met its statutory obligations under Section 271 of the Act for in-region interLATA market entry. TRA further urges the Commission to recommend that the FCC deny Ameritech's Application until Ameritech can demonstrate that it has fully complied with the unambiguous prerequisites for in-region interLATA market entry under the Act -- evidenced by the development of *meaningful* competition to a majority of Michigan's telecommunications users, as envisioned by Congress.

I. INTRODUCTION

A nationwide trade association, TRA represents more than 510 entities engaged in, or providing products and services in support of, the provision of value-added telecommunications services. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and Internet services. TRA's members will also be among the many new

market entrants who will soon be offering local exchange telecommunications services. They will do so, generally through traditional "total service" resale of incumbent local exchange carrier or competitive local exchange carrier retail service offerings or by recombining unbundled network elements obtained from incumbent local exchange carriers, such as Ameritech, to create "virtual local exchange networks."

TRA's members primarily serve small to mid-sized commercial, as well as residential customers, providing such entities and individuals with access to rates generally available only to much larger users. TRA's members also offer small to mid-sized commercial customers enhanced, value-added products and services, including a variety of sophisticated billing options, as well as personalized customer support functions, that major carriers generally reserve for large-volume corporate users.

Not yet a decade old, TRA's carrier members --- the bulk of whom are small to mid-sized, albeit high-growth, companies --- nonetheless collectively serve millions of residential and commercial customers. The emergence and dramatic growth of the resale industry over the past five to ten years has produced thousands of new jobs and myriad new commercial opportunities. In addition, TRA's carrier members have facilitated the growth and development of second- and third-tier facilities-based interexchange carriers by providing an extended, indirect marketing arm of their services, thereby further promoting economic growth and development. And perhaps most critically, by providing cost-effective, high quality telecommunications services to the small business community, TRA's carrier members have helped other small and mid-sized companies expand their businesses and generate new employment opportunities.

TRA's interest in this matter is in protecting, preserving and promoting competition within the interexchange telecommunications services market, as well as in speeding the emergence and growth of resale. TRA members have gained a solid competitive foothold in the domestic interexchange telecommunications market, and are making significant inroads into the international, wireless and enhanced services arenas. The long distance market share held by resale providers is currently estimated to be between five and fifteen percent. Resale carriers have carved out this market position in direct head-to-head competition with the nation's largest three or four IXCs, by identifying market niches overlooked by the major carriers and providing affordable, high quality telecommunications and customer service to these market segments.

Resale carriers, hence, do not shrink from competition; indeed, TRA has long been a champion of competition in the telecommunications industry, recognizing that the emergence, growth and development of a vibrant telecommunications resale industry is a direct product of a series of pro-competitive initiatives implemented, pro-competitive policies adopted and pro-competitive actions taken, by the Congress, the courts, the Federal Communications Commission ("FCC") and various state regulatory bodies, including the Michigan Commission, over the past decade.

Yet TRA has very serious concerns about the *premature* entry of Ameritech Michigan into the in region, interLATA market based in part upon the experience of its members in the IXC market. In the late 1980s, the interLATA market was initially dominated by one carrier having a 75% market share, with two other major carriers holding a combined 16% market share. During the interim period of approximately ten

years, the dominant carrier lost more than a quarter of its market share; the other two carriers each increased their market shares by 50% and a fourth carrier gained a 5% market share. The remainder of the market was held by smaller carriers and to a significant extent by many small resale entities, many of whom are TRA members. During this interim period, more than a full decade, the dealings of TRA's resale carrier members were marred by persistent and substantial anticompetitive abuses. It has only been recently, in a fairly robust IXC competitive marketplace where the dominant IXC's market share decreased to approximately 50%, that the dominant IXC converted its philosophy toward resale carriers as desirable customers and reformed its actions consistent with that viewpoint. While TRA would welcome Ameritech's entry into the interLATA market as a new potential underlying interexchange carrier, its premature entry could spell disaster for smaller companies in the absence of meaningful local competition.

Given the unique vulnerability of resale carriers, particularly small resale carriers, to anticompetitive abuses by entities upon whom they are dependent for network services, TRA submits that the timing and conditions of competitive entry by Ameritech into the in-region, interLATA market will be critical to the continued competitive viability of the telecommunications resale industry. Premature entry into this market by Ameritech could easily result in the elimination of numerous resale providers, such as TRA members, through anticompetitive tactics and stratagems. Smaller competitors, who will in every respect, be just as much a part of the competitive landscape as the major companies, would be disproportionally affected.

It is from the perspective of its smaller-sized member entities who engage

in resale activities that TRA focuses its comments on those issues raised by Ameritech's submissions.

II. AMERITECH CAN NOT MEET THE REQUIREMENTS OF SECTION 271(c)(1)(A) SIMPLY BY ENTERING INTO INTERCONNECTION OR RESALE AGREEMENTS.

Ameritech has provided evidence that it has entered into initial interconnection and resale agreements with several carriers. Ameritech argues that the Commission should support its entry into the in region interLATA market because it has executed such interconnection agreements pursuant to the requirements of the Act. This argument is spurious. The fact that Ameritech has entered into one or more interconnections agreements does not fulfill the requirements of Section 271 (c) (1) (A) of the Act. Though Ameritech has entered into various interconnection agreements, it has not, nor can it, demonstrate that it has fully implemented those agreements.

Even read in isolation from other provisions in the Act, Section 271 (c) (1) (A) requires that Ameritech demonstrate that it "is providing" access and interconnection. i.e. that it has fully implemented the interconnection agreements. Ameritech must demonstrate, at a minimum that it has actual competitors. This requirement can only be met if a competitor has been in the local exchange market long enough to compel a determination that interconnection and services are being provided in accordance with the provisions of the interconnection agreement. Congress recognized that the implementation of the provisions of interconnection agreements would take time as indicated by the language "predominantly over their own telephone exchange service facilities." As stated in the Conference Report,

> For purposes of new section 271 (c)(1) (A), the BOC must have entered into one or more binding agreements under which it *is providing* access and interconnection to one or more competitors providing telephone exchange service to residential and business subscribers. *The requirement that the BOC "is providing access and interconnection" means that the competitor has implemented the agreement and that competitor is operational.* This requirement is *important* because it will assist the appropriate State commission in providing its consultation and *in the explicit factual determination* by the Commission under new section 271 (d) (2) (B) that the requesting BOC has *fully implemented* the interconnection agreement elements set out in the "checklist" under new section 271 (c) (2).
>
> House Conference Report No. 104-458, at 148, emphasis added.

The Act is designed, among other things, to open the monopoly local exchange/exchange access markets to competitive entry, eliminating "not only statutory and regulatory impediments to competition, but economic and operational impediments as well".[4] It belabors the obvious, however, to state that an order of magnitude difference exists between theoretically "contestable" markets and actually "contested" markets. While competitive potential may ultimately evolve into actual competition significant enough to discipline the incumbent LEC market power, the lag in time before competition actually emerges in the local telecommunications market may, and likely will, be substantial. And this lag in time will be exacerbated by BOC resistance to competitive entry and the competitive provision of local exchange and exchange access service. As succinctly put by the FCC:

> We recognize that the transformation from monopoly to fully competitive markets will not take place overnight. We also realize that the steps taken thus far will not result in the immediate arrival of fully-effective competition. Accordingly, the Commission and state regulators must

[4] Local Competition First Report and Order, FCC 96-325 at paragraph 3.

> continue to ensure against any anticompetitive abuse of residual monopoly power, and to protect consumers from the unfettered exercise of that power.[5]

The ability of the BOCs to disadvantage competitive providers of long distance service through anticompetitive abuse of local exchange/exchange access "bottlenecks" is well established. Whether the anticompetitive conduct takes the form of discriminatory access or other forms of strategic price of service manipulation, anti-competitive restrictions or misallocation of costs and/or assets from competitive to monopoly activities or other forms of cross-subsidization, the result will be the same --- competition in the long distance market will be adversely impacted and it is the smaller carriers that comprise the rank and file of TRA's membership which will be most directly affected and most seriously harmed.

In considering the plain meaning of the provisions of Section 271 which require that local competition must be implemented before Ameritech is permitted in region interLATA entry, it is imperative that the Commission also scrupulously consider Act's intent to "bring competition to the local markets while preserving existing competition in the long distance market" by recognizing that premature entry by Ameritech into the long distance market would be harmful to both the long distance and local markets.

---

[5] Ameritech Operating Companies: Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, FCC 96-58, 11 FCC Rcd 14028, paragraph 130 (released February 15, 1996).

III. FULFILLMENT OF THE FACILITIES-BASED COMPETITOR PRESENCE TEST IN SECTION 271(c)(1)(A) CAN BE MET ONLY BY THE EXISTENCE OF A FACILITIES-BASED COMPETITOR WHICH DOES NOT RELY ON AMERITECH'S FACILITIES.

TRA endorses and concurs with the discussion of Sprint Communications Company, L.P. in its Legal Memorandum filed before the Public Utilities Commission of Ohio on November 13, 1996 ("Sprint Memo") regarding these issues.[6] As succinctly stated by Sprint, "The central characteristic of facilities-based competitors is *their freedom from reliance on the incumbent LEC's facilities*" (at 2, emphasis added). Ameritech's illogical argument that Congress intended that leased facilities be included in the term, "facilities-based" and that facilities-based competition can be established where a competitor leases unbundled network elements is not a serious or meritorious discussion of these issues. A local exchange provider who simply combines incumbent local exchange carrier network elements should not be considered a facilities-based competitor for purposes of considering Ameritech's entry into the in region, interLATA market.

TRA will not repeat the facts from the legislative history of the Telecommunications Act of 1996 (the "Act") nor the well reasoned arguments that support the inescapable conclusion that "facilities-based" means that the competitor owns its own network. Instead, TRA emphasizes that fully operational local exchange competition by providers who own their own networks (and thus do not rely on Ameritech's facilities to provide their services), is critical for TRA's members to have the Congressionally-

---

[6] In the Matter of the Investigation of Ameritech Ohio's Entry into In-Region interLATA Service under Section 271 of The Telecommunications Act of 1996, Public Utilities Commission of Ohio, Case No. 96-702-TP-CO1, Sprint Communications Company L.P.'s Legal Memorandum, November 13, 1996. Pertinent sections are attached hereto at Appendix A.

intended opportunity to enter and compete in local exchange markets. As the experience in the IXC market has proven, resellers are able to enter and survive only in a robust and fully competitive market place. Small resale carriers will be deleteriously impacted more than larger competitors by the premature in-region, interLATA market entry by RBOCs such as Ameritech, because anticompetitive abuses such as untimely processing of service orders, raiding of customer bases through abuse of carrier confidential data, cash-flow difficulties spawned by withholding or altering call detail records, and denial of access rates and services that are made available to other users with commensurate or even substantially lower traffic volumes can effectively drive members out of business. These abuses have all been experienced in the IXC market and more recently in the wireless industries. As also shown by recent experiences, the only way these abuses dwindle or cease to exist is in a truly competitive market, i.e. one in which there are fully operational facilities-based competitors---those which provide services through networks and facilities to which they have title and full control.

IV. THE TERM "PREDOMINATELY" AS USED IN SECTION 271(c)(1)(A) OF THE ACT SHOULD BE READ TO REQUIRE PREDOMINATE USAGE OF THE COMPETITOR'S OWN LOOP FACILITIES.

In the interest of brevity, TRA once again concurs with, and adopts, the legal analysis of Sprint in its Memo (at 8 through 12) with respect to these issues. TRA particularly endorses the precept that the Commission should evaluate the term "predominantly" both quantatively and qualitatively. Qualitatively, the term "predominantly" must be read as modifying the phrase "over its own facilities" and thus

it means that for the most part, the facilities-based carrier must *actually* be providing service to *both* residential and business customers over its own independent (from Ameritech's) network so that the public has a real choice of providers.

TRA's position is that "predominantly" as used in Section 271 (c) (1) (A) of the Act should, at a minimum, be found to mean that no less than 50% of a facilities-based Competitive Local Exchange Carrier's ("CLEC's") facilities, including local loops, are under its control or that no less than 50% of the CLEC's capital network investments have gone into construction of its *own* facilities. As emphasized above, the leasing of Ameritech's facilities or network elements cannot be considered "facilities-based" under a predominance test. "Predominantly" should more appropriately equate to a preponderance of the CLEC-owned facilities---70% or more of the total network.

V. THE COMMISSION SHOULD DETERMINE THAT THERE IS ACTUAL COMPETITION WITHIN A SIGNIFICANT GEOGRAPHIC AREA BEFORE AMERITECH CAN BE DEEMED IN COMPLIANCE WITH SECTION 271 OF THE ACT.

Because the Act does not set forth the number of customers or services provided to customers of a competitor nor the size of geographic area served by a competitor, any resolution of these issues should turn on the intent of the Act: to permit Ameritech in-region, interLATA entry only when it faces meaningful competition and to promote such competition against Ameritech. It is unlikely that upon market entry any one facilities-based carrier will have developed a network capable of providing service to a significant number of residential and business subscribers as required under Section 271(c)(1)(A) of the Act. As argued previously, the Act should be read to require the

presence and full functioning of multiple facilities-based carriers as an indication that competitive alternatives exist for a significant number of subscribers.

TRA agrees with the discussion of MCI's, Legal Analysis of Statutory Conditions for BOC entry into Long Distance; that market share is the best evidence to measure competition in the local exchange market although there are other factors, which taken together, may be useful in determining the level of competition (MCI Memo generally at 2 to 7 and at 30 to 33). [7] Though there may not be a specific "bright line" test which is appropriate in all circumstances, the Commission should attempt to quantify a percentage of Michigan customers who subscribe to competitive alternatives or have meaningful access to competitive alternatives.

Until meaningful competition exists, Ameritech has bottleneck power that evokes anticompetitive behavior. The Act recognized that regulatory oversight alone could not impede this activity and thus set forth the separate public interest test which is unrelated to Ameritech's compliance with the checklist requirements of Section 271 (c) (2) (B). Indeed, the public interest requirement can be met only if there is actually robust competition in the local exchange market. Otherwise, Ameritech will have "the incentive to misallocate to its regulated core business costs that would be properly allocated to its

[7]Illinois Commerce Commission on its own Motion: Investigation concerning Illinois Bell Telephone Company's compliance with Section 271(c) of the Telecommunications Act of 1996, Illinois Commerce Commission, No. 96-0404, Legal Analysis of the Statutory Conditions for BOC Entry into Long Distance. MCI Telecommunications Corporation, October 1996. Pertinent sections are attached hereto at Appendix B.

competitive ventures."[8]

In large and complex organizations, such as Ameritech, wrongful cost/asset-shifting between competitive and monopoly activities in adjacent markets can take on myriad forms. Such a cross-subsidy would occur anytime Ameritech conferred on its long distance operation a benefit derived from its monopoly local exchange activities without adequate compensation to the monopoly sector. Such a benefit could take the form of transfers of (i) capital; (ii) facilities or equipment; (iii) personnel; (iv) research and development; (v) services; or (vi) any of a variety of other items.

Identifying and preventing misallocations of costs and/or assets between competitive and monopoly activities in adjacent markets in organizations of the size, and with the resources, of Ameritech, would present both the Commission and the FCC with difficult, or even insurmountable, problems. Policing the myriad means by which Ameritech could act anticompetitively would nonetheless require a massive commitment of regulatory resources. Given that regulatory resources are stretched thin today, it is questionable whether federal or state regulators have the funds, personnel and other tools necessary for this task. As the FCC recently conceded, "[a]lthough we could prescribe rules that would completely prevent improper cost allocations by enforcing complete separation between regulated telecommunications operations and new activities, we recognize that it would be difficult, if not impossible, to enforce such rules".[9]

---

[8] Accounting Safeguards NPRM, FCC 96-309 at paragraph 6.
[9] Id. at paragraph 7.

Regulations, no matter how well intentioned, are only effective if regulated entities, including Ameritech, attempt in good faith to comply with such regulations. Good faith compliance by Ameritech is unlikely absent an incentive potent enough to overcome their instinctive reaction to preserve its local exchange/exchange access "bottleneck" monopoly. Lest one think that this characterization of Ameritech's instinctive reaction is too harsh or is exaggerated, TRA would direct the Commission to several maneuvers its sister affiliate, Ameritech Illinois, has proposed:

- for collocation activities, to impose a non-recurring change of $40,000 for the first 100 square feet of floor space required by a CLEC and a separate non-recurring charge of $15,000 for each additional 100 square feet used;
- for *each* loop, a service order charge of $50 and a line connection and loop conditioning charges in excess of $35;
- regarding qualification for resale discounts, to impose a limitation on a resale carrier's aggregation of end-user's calling volumes for the purpose of qualifying for usage volume discounts.

These examples certainly underscore the fact that the only incentive that is conceivably strong enough to overcome this preservationist instinct is the prospect of entry into the in region, interLATA services market. To effectively mitigate the potential for such activities, the market must be effectively competitive.

VI. IN RENDERING A PUBLIC INTEREST RECOMMENDATION REGARDING AMERITECH'S IN-REGION INTERLATA ENTRY, THE COMMISSION MUST FIRST CONSIDER THE TRUE COMPETITIVENESS OF TODAY'S LOCAL MARKET.

Public interest, convenience and necessity is a traditional regulatory precept. The facts and circumstances examined to find the furtherance of this standard vary in form forum to forum. In determining "public interest, convenience and necessity" most regulatory agencies evaluate facts and circumstances in the context of monopoly control of the market. In the interexchange market, there has been a transformation from monopoly to an active (yet still emerging) competitive environment.

Today the interexchange market is finally somewhat friendly to the entry of new long distance providers. Conditions favorable to new entrants in this market have evolved over time as more carriers have garnered noticeable market share percentages and as regulatory flexibility has become more widespread. However, it has taken more than a decade to achieve conditions that encouraged and nurtured multiple vendor provision of service in the interexchange market.

The Commission should not assume that the local exchange market is primed for multiple vendor provision of service. Though the Act has set the stage by creating the potential for multiple competitive providers, TRA predicts that the process by which multiple vendor provision of service will develop will be similar to the one which reshaped the interexchange marketplace. It goes without saying that the ingredient of time will be critical. Competitive local exchange carriers must be allowed a reasonable "ramp-up" period before Ameritech is permitted in enter the in region, interLATA market. The ramp up period should be long enough for the Commission to ensure that the competitive checklist requirements have been functionally met and are operational. It should also be

long enough to ensure that significant competition is a reality in Ameritech's local exchange service area. In short, competition must be robust in order that Ameritech's bottleneck power can no longer be used to hamper competition in the local exchange market nor to diminish competition in the long distance market. At the end of a reasonable interim period, the Commission will be able to determine whether Ameritech provisions, and supports fully functional interconnection, network element unbundling and services as well as whether competitive providers are effectively competing.

TRA supports MCI's legal analysis' concerning the public interest test. Its very existence

> reflects a legislative [Congressional] judgment that a BOC's satisfaction of the checklist does not prove the existence of real competition, and that more is required before BOCs should be granted inter LATA entry. Congress' inclusion of the public interest test demonstrates that it intended truly effective competition to have taken hold before the BOCs would be allowed into long distance. Although it increases the likelihood that effective local competition will develop over time, full implementation of the checklist does not necessarily guarantee that such competition will exist at the time that a BOC applies for authority to provide in-region long-distance services.

MCI Memo at 29.

MCI's Memo provides the legislative history supporting the conclusion that a BOC could be denied in region, interLATA entry despite its having fully implemented the checklist conditions if the FCC found that the degree of competition in the local exchange market has not eliminated the ability and incentive of the BOC to obstruct the vibrant interexchange market (MCI Memo at 29-30). Thus the "public interest"

assessment should consider the effects of Ameritech's entry upon both the interexchange and local markets. A finding of public interest requires the conclusion that the local market playing field is level and that the long distance competitive market is not diminished by Ameritech 's requested in region interLATA entry.

Furthermore, the local market cannot not be competitive until (1) the local competition provisions of the Act are implemented; (2) universal service reform is implemented; and (3) access charge reform is implemented.

[A]s long as the current system of "implicit" funding remains in place, the BOCs will have access to huge sums of ratepayer funds to subsidize (directly or indirectly) competitive ventures, and their would-be competitors will operate at a huge disadvantage.

> Furthermore, if the BOCs are permitted to enter the long distance market before these essential telecommunications reforms are completed, the FCC and state commissions will lose the only leverage they have to obtain any cooperation from the BOCs in reforming access charges and universal service. Once the BOCs provide in-region long distance services, nothing will counter-balance their incentive to delay and defeat efforts to bring access to cost and to achieve a competitively neutral system of universal service support. And their incentive and ability to lessen long-distance competition will be unchecked.

MCI Memo at 34.

Additionally so long as access charges remain significantly higher than the economic cost of providing exchange access, the public interest is not served.

> [P]ermitting the BOCs to provide long distance service while access charges remain at their current inflated level would substantially increase their ability and incentive to impede both local and long distance competition. This does not mean that the BOCs must wait to submit applications under section 271 until the Commission's promised access

> charge reform proceeding is completed no later than next spring. Under the Commission's price cap rules, nothing prevents the BOCs from reducing access charges sooner.

MCI Memo at 33.

While recognizing that full implementation of the checklist conditions should assist in development of a competitive local exchange market, TRA agrees with the reasoning of other parties who stress that the public interest factors are separate and independent from the checklist requirements.

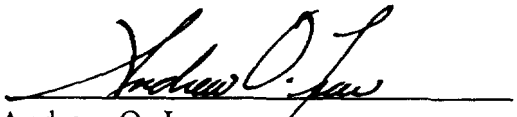
VII. CONCLUSION

The questions posed in Attachments A and B of the Commission's Order should yield a thorough record of Ameritech's efforts at meeting the competitive checklist. Yet the true test of Ameritech's compliance with Section 271 of the Act will not reside in simply the appearance of competition or the elaborate exercise of entering interconnection agreements. Local competitors' market size must be both quantitative and qualitative. Ameritech's in-region interLATA authority should be predicated upon whether *actual* competition develops and is fully functional as a result of the operation of the interconnection agreements and the services which are supplied to new local exchange providers. This will be the sole constraint to anticompetitive conduct and competition. Ameritech's entry into the in the region interLATA market, if prematurely

granted, would certainly impact adversely TRA members' ability to enter and survive in that market, and moreover would effectively limit, rather than expand the level of competition in all markets, contrary to the intent and spirit of the Act.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

Andrew O. Isar
Director-Industry Relations
4312 92nd Avenue NW
Gig Harbor, WA 98335
206.265.3910

8 January 1997

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation into Ameritech Ohio's Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996	))))	Case No. 96-702-TP-COI

SPRINT COMMUNICATIONS COMPANY L.P.'S
LEGAL MEMORANDUM

Sprint Communications Company L.P.

Ellen A. D'Amato
Martha Jenkins
Sprint Communications Company L.P.
8140 Ward Parkway
Kansas City, Missouri 64114
(913) 624-6878

Sue D. Blumenfeld
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D. C. 20036

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Investigation into Ameritech Ohio's Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996	))))	Case No. 96-702-TP-COI

SPRINT COMMUNICATION COMPANY L.P.'S
LEGAL MEMORANDUM

Sprint Communications Company L.P. (Sprint) respectfully submits this legal memorandum in response to the Entry issued by the Public Utilities Commission of Ohio (Commission) on October 18, 1996.

This legal memorandum addresses those questions that sought legal opinions or raised questions of statutory interpretation, which includes Questions A2 through A10 and C. Determination of Public Interest, Convenience and Necessity. To the extent that factual information is sought by the Entry, Sprint is submitting the testimony of Edward K. Phelan and Betty L. Reeves.

QUESTION NO. 2: What constitutes "facilities-based" competition pursuant to Section 271(c)(1)(A)?

The central characteristic of facilities-based competitors is their freedom from reliance on the incumbent LEC's facilities. Thus, in order to meet the requirements of Section 271(c)(1)(A), there must be one or more competitors with sufficient market presence, in the form of their own facilities, to provide both local business and residential subscribers a meaningful alternative to Ameritech Ohio.[1] Such carriers must own their own facilities; it is also particularly important that such carriers own significant local loop facilities. The mere leasing of local loop elements from Ameritech Ohio would simply continue the current dependence upon Ameritech Ohio and is therefore insufficient.[2]

The other factors raised in the Commission's questions, such as the size of the competitors, the scope of their offerings, the percentage of consumers who subscribe to those offerings and the percentage of consumers to whom the services are available are all important considerations in the Section 271(c) analysis. But Congress did not intend that the test should turn on any specific quantitative measure of the competitive LECs' market presence. Rather, regulators should examine more generally whether the presence of competitive carriers in the local market (1) demonstrates that, in fact, the barriers to local entry have been effectively lowered and genuine facilities-based competition has

---

1 The public policy reasons for insisting on a viable, independent alternative to Ameritech Ohio as a prerequisite to Section 271(c)(1)(A) approval specifically and Section 271 approval more generally are discussed in the Testimony of Edward K. Phelan.

2 These issues are discussed in the responses to questions 3 and 4.

emerged, and (2) effectively restrains the incumbent's ability to use its local monopoly to harm competition in the long distance market.[3]

Neither of these requirements has been met in Ohio. Indeed, not one competitive carrier is currently providing local exchange service predominantly over network facilities that it owns. Since there is only de minimis facilities-based competition in Ohio, Ameritech Ohio cannot meet the requirements of Section 271.

---

[3] These issues are discussed more fully in the testimony of Edward K. Phelan.